

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
PG&E CORPORATION AND PACIFIC) Chapter 11
GAS AND ELECTRIC COMPANY, ET)
AL.) San Francisco, California
Debtors.) Wednesday, May 26, 2021
) 10:00 AM
)
) STATUS CONFERENCE RE
REORGANIZED DEBTORS'
OBJECTION TO CONSOLIDATED
EDISON DEVELOPMENT, INC.'S
AMENDED CURE PAYMENT CLAIM
DEMAND FILED BY PG&E
CORPORATION
[10613]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):
For the Reorganized THEODORE E. TSEKERIDES, ESQ.
Debtors: Weil, Gotshal & Manges LLP
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For Consolidated Edison HUGH M. McDONALD, ESQ.
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PG&E Corporation, et al.

SAN FRANCISCO, CALIFORNIA, WEDNESDAY, MAY 26, 2021, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session. The Honorable
5 Dennis Montali presiding. Calling the matter of PG&E
6 Corporation. I'll bring counsel in now.

7 | (Pause.)

8 THE COURT: All right, Mr. Tsekerides, good morning.
9 Nice to see you.

10 MR. TSEKERIDES: Good morning, Your Honor. It's been
11 a while. It's good to see you again.

12 THE COURT: All right, just --

13 MR. TSEKERIDES: I --

14 THE COURT: -- state your name for the record.

15 MR. TSEKERIDES: Sure.

16 THE COURT: And Mr. McDonald, good morning. State
17 your name after Mr. Tsekerides.

18 MR. TSEKERIDES: Judge, Theodore Tsekerides from Weil
19 Gotshal for the reorganized debtors.

20 MR. MCDONALD: Good morning, Your Honor. Hugh
21 McDonald from Pillsbury Winthrop Shaw Pittman for Consolidated
22 Edison Development.

THE COURT: Okay.

MR. MCDONALD: It's nice to see Your Honor again.

25 Since our last time, I've changed firms from Troutman Sanders

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1 to Pillsbury. Nothing like changing firms during a pandemic.

2 THE COURT: There's nothing wrong with that. Nothing
3 wrong with Pillsbury.

4 So what's your pleasure? You gentlemen asked me to
5 have a status conference. I've had a great time reading lots
6 of stuff already, but what have you decided?

7 MR. TSEKERIDES: Well, yeah, sure. So and I think
8 we'll be quick, Your Honor. So we've conferred, and this is a
9 cure demand, as I'm sure you've gathered from the papers. And
10 there's one sort of legal issue, the ipso facto clause argument
11 that we've made that, in discussing with counsel, we felt that
12 that presented Your Honor with a discrete legal point that, if
13 you agreed with us, ConEd would have to sort of reassess if
14 they wanted to appeal or try to go forward on a different path.
15 And if you ruled in their favor, we'd have to reassess what
16 would be ahead of us on -- we know they want a lot of
17 discovery, and both expert and fact. That would become very
18 messy.

19 And we thought well, if we did this ipso facto clause
20 argument, we could put in a brief that -- we touched on it in
21 our papers, but we would put in a more fulsome brief. And then
22 ConEd would put in a response, and we'd have a reply. And then
23 we were thinking some time -- we have a schedule that we
24 proposed. And we were thinking that we'd then have a hearing
25 on that point.

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1 And that ruling, one way or the other, would take us
2 in a certain direction. Again, if you ruled against us, ConEd
3 would want, as they've indicated to us, both fact and expert
4 discovery. We don't have to debate today whether we agree with
5 that, but we know that that would be coming, and that they'd
6 have very different arguments in that context.

7 So in order to try to avoid that and put before you
8 what we both agree is a purely legal issue, we wanted to
9 present that to the Court, see if you agreed, and if so,
10 present a fairly tight schedule. We would still be doing this
11 within the next couple of months -- to have that heard by the
12 Court in August.

13 THE COURT: I'll come back to Mr. McDonald in a
14 minute, but for openers, we're going to get rid of the June
15th hearing on this motion.

16 MR. TSEKERIDES: Oh yes, yes, I'm sorry.

17 THE COURT: Okay.

18 MR. TSEKERIDES: Yeah, that -- yes, absolutely.

19 THE COURT: Okay. And secondly, what -- it's
20 interesting that -- what you describe it, Mr. Tsekereides,
21 because as I read the -- I haven't read it -- one document I
22 did read only, is the unredacted version of your opening brief.
23 And it struck me, when I saw the ipso facto argument, I also
24 saw these other three categories, which I don't think we're
25 breaching any confidence to say it has to do with attorneys'

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1 fees, default interest, and cost. And I'm wondering, well,
2 that seems like a legal question too. I mean, what is the fact
3 question about the applicability of provisions of documents?
4 Maybe Mr. McDonald can answer that more --

5 MR. TSEKERIDES: Yeah, that -- yeah.

6 THE COURT: I mean, I fully expected, until five
7 minutes ago, that I would hear from Mr. McDonald and then
8 whatever you had in mind for a cross-briefing on those legal
9 issues, not the very narrow one.

10 Mr. McDonald, isn't it a legal question beyond just
11 ipso facto?

12 MR. MCDONALD: It's a blended question, Your Honor, of
13 fact and law. The objection raises questions of fact as to
14 whether or not the damages were foreseeable at the time of the
15 parties' entering into the contract. And we believe they were
16 foreseeable, and therefore, our direct damages are recoverable.
17 The debtor has taken the position that they are were not, and
18 therefore, they're consequential.

19 So I think that does have an element of law for sure,
20 Your Honor, and applicable case law from the Ninth Circuit, but
21 also has a question of fact that we would like to take
22 discovery on, but we also have an expert witness we'd like to
23 proffer as part of that resolution or determination.

24 So we reached out, however, to the debtor and said we
25 do have, within your objection, questions of fact and law. But

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1 we do view your initial objection as one purely as a question
2 of law. And that for efficiency's sake, so neither one of our
3 clients are expending additional funds briefing or taking
4 discovery on the other issues, we thought it was best to
5 proceed with this one particular issue up front. And then I
6 think, as Mr. Tsekerides said, if there's a determination one
7 way or the other, the other party will have to reassess the
8 claim and what their status is.

9 THE COURT: Well, no, no, I understand, particularly
10 if I agree with the debtor.

11 MR. MCDONALD: Right.

12 THE COURT: I mean, obviously, if I agree with the
13 debtor, we're done, and you can appeal.

14 MR. MCDONALD: I'm left with an appeal. And if you
15 agree with us, (indiscernible) --

16 THE COURT: But I don't -- I don't make my decisions
17 based upon an appeal. My decision is what I expect to be the
18 right result, and it's not on my list. Besides, Mr. McDonald,
19 just because you're reversed on appeal doesn't mean you're
20 wrong. But my point --

21 MR. MCDONALD: Your Honor, I completely respect that.

22 MR. TSEKERIDES: And Your Honor, we have discussed --

23 THE COURT: But my --

24 MR. TSEKERIDES: Oh, sorry. Go ahead.

25 THE COURT: But what I was going to say is that

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1 what -- I won't say it troubles me. That's the wrong answer.
2 If you both think it's the right way to do it, I'm not going to
3 second guess you. But it struck me when you stated it, Mr.
4 Tsekerides, that it was so narrow that I wondered if it was
5 appropriate or efficient to go to the legal question. Because
6 it's sort of like, I would think -- let's use the example of
7 default interest. To me, again, you either owe the default
8 interest or you don't. I don't know why a legal consequence of
9 default interest is foreseeable. It may well be that there is
10 a reason why it is, and certainly, Mr. McDonald, if he believes
11 that that's the theory, I'm not going to take it away from him.

12 I would hate to -- I would hate to have the matter be
13 briefed very narrowly, only to -- let's assume I reject PG&E's
14 ipso facto theory. And I say okay, let's go to the next step.
15 Is there not still an efficiency in teeing up the legal
16 question? If the answer is no, then ConEd is entitled to
17 develop the record. Obviously, I can't take it away. It would
18 be worse -- worse than getting reversed on appeal is getting
19 reversed for granting a motion on a legal question when there's
20 a fact dispute.

21 MR. TSEKERIDES: That's a -- that's a fair point, Your
22 Honor. We had talked about it, and maybe as we talk through
23 this more we can make some modifications. I mean, I think the
24 way we had looked at it originally was the ipso facto,
25 definitely a legal issue. And then our -- the debtors'

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1 position was look, we don't think that the damages you're
2 seeking are direct damages. But --

3 THE COURT: Yeah.

4 MR. TSEKERIDES: -- we recognize that California law
5 is mixed. And they can make an argument that, well, the
6 foreseeability point that Mr. McDonald made, and that could
7 lend itself to factual disputes.

8 Now, one thing we could do, and maybe even keeping
9 with the same schedule, although I'd want a little bit of time
10 to think about that, is to include the ipso facto and then make
11 a legal argument on these other points. And then Mr. McDonald
12 at ConEd can put in what essentially would be like a 56(f)
13 type -- not a pleading but in their response to that, say,
14 well, the ipso facto, clearly legal. These other points they
15 can explain why they're not legal and the facts that would
16 support them.

17 And then you could decide in that context whether to
18 address them, you're convinced by them that they're factual
19 disputes, or you're convinced by us that they're not and that
20 you can rule, as a matter of law, that they're not recoverable.
21 I mean, that's an option as well that sort of keeps in -- I
22 think is still sort of faithful to what we were thinking about
23 but then also provides the Court with an opportunity to address
24 other potentially purely legal issues.

25 THE COURT: Mr. McDonald -- by the way, Mr. McDonald,

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1 I see you're turning your mic on and off, and that's fine. You
2 don't -- it's up to you. If you have a dog barking or a truck
3 going by, I appreciate you doing it, but you don't need to.

4 MR. MCDONALD: Yeah, I have two dogs, and we have
5 workers on the street (indiscernible) the street.

6 THE COURT: Oh, well, then by all means, we don't want
7 to hear your dogs. Okay, go ahead.

8 MR. MCDONALD: So Your Honor, I think what Mr.
9 Tsekerides is suggesting doesn't really work because we believe
10 there are actual issues of fact. They're taking the position
11 that, as far as PG&E is concerned, these damages were not
12 foreseeable at the time of contract.

13 Now, if you want to proceed down the route of briefing
14 this as a question of law, I think we would have to have an
15 underlying assumption that, assuming PG&E believed or was aware
16 of the potential damages in the financings, and thus the
17 damages that would result from their breach, as a matter of
18 law, are the damages then recoverable without having to get
19 into the factual issue itself.

20 THE COURT: Well --

21 MR. MCDONALD: And I think that would work because I
22 think otherwise, we're blending the two and putting in front of
23 you as to whether or not you believe there is a question of
24 fact.

25 THE COURT: Yeah, I understand but -- okay, let me --

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1 again, Mr. Tsekerides, you made reference to ConEd's argument,
2 but I haven't read any of ConEd's arguments. I mean, I haven't
3 even been presented with them. They haven't been filed.

4 Right?

5 MR. TSEKERIDES: That's true. That's true. I mean,
6 that's true.

7 MR. MCDONALD: Your Honor -- and I think --

8 THE COURT: Okay. Hold on.

9 MR. MCDONALD: Sorry. I'm sorry. Go ahead, Your
10 Honor.

11 THE COURT: But what I was going to -- what I'm asking
12 you, Mr. McDonald, is is it a fact question that has to be
13 determined by external facts, or a fact question that can be
14 found in the documents? So that, for example, I'll give you a
15 hypothetical. If I have a contract with you that recites that
16 if you don't pay me, I'm going to suffer this other consequence
17 and, therefore, because I've got this other commitment and that
18 might cause me damages, that, to me, might be a fact question.
19 But it's a fact that you -- that we know from the documents.

20 If the -- if, on the other hand, the fact -- if the
21 foreseeability depends upon somebody else's testimony and
22 recollection, then I agree with you. But why don't the
23 documents themselves answer the question? And you can't -- you
24 don't -- you don't win a fact argument by an expert.

25 I mean, (audio interference) a legal malpractice case,

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1 for example. If you get sued for legal malpractice, the expert
2 would say, based upon these facts, that was (audio
3 interference) come up to the standard of care. Maybe there's a
4 legal expert who can opine to say that PG&E is on the hook for
5 these consequential damages. But -- so I guess I'd need some
6 help from you to understand whether it really is a fact
7 question, or it's a fact question that can be determined within
8 the four corners of the documents.

9 MR. MCDONALD: Your Honor, the case law -- I don't
10 have all the cites in front of me. And I obviously would have
11 the opportunity to brief it to you.

12 THE COURT: Yeah.

13 MR. MCDONALD: A lot of the case law has looked to
14 what the knowledge of the parties were or is inferred to have
15 known at the time of the contract. So one of the cases it was
16 whether or not one of the parties was aware of a bonding issue
17 that the contractor had. And in one instance, the Ninth
18 Circuit held because there was no knowledge of the bonding
19 issue, the subsequent damages by breach were not recoverable
20 because they weren't direct --

21 THE COURT: Yeah.

22 MR. MCDONALD: -- and foreseeable.

23 THE COURT: But that -- but that --

24 MR. MCDONALD: Other cases --

25 THE COURT: -- but that goes back --

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1 MR. MCDONALD: Yeah, other cases --

2 THE COURT: That goes back to the --

3 MR. MCDONALD: I'm sorry.

4 THE COURT: Go ahead. You finish, sorry.

5 MR. MCDONALD: Other cases following on from that have
6 held that in a situation where the parties were, in fact, aware
7 of the underlying situation with respect to a bonding issue for
8 the particular contractor at issue, it was foreseeable that a
9 breach would have -- would have an impact on the ability of
10 that entity to obtain further bonding. And therefore, those
11 damages were recoverable as direct damages.

12 So I see where Your Honor's coming from. And we have
13 pointed out to PG&E both what I would call contractual and
14 extra-contractual points at which -- where they had knowledge
15 of the financing and the terms of the finances as to general
16 project finances.

17 But I think it would be helpful, Your Honor, if we
18 could just step back one second. I could put it contextually
19 for you. ConEd has sixteen plants that supply renewable energy
20 to PG&E.

21 THE COURT: I'm aware of that.

22 MR. MCDONALD: Several of those plants were financed
23 through project financings (phonetic). One of the plants
24 that's at issue here was a -- was a refi takeout, a subsequent
25 financing of the project financing.

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1 The other two financings for what we call the
2 California One Holdings (phonetic) and California Two Holdings
3 (phonetic) cover roughly another six projects that each had
4 individual project financings via the structure. Those project
5 financings enabled the construction of these plants and were
6 geared towards the power purchase agreements that PG&E entered
7 into.

8 So PG&E would consent to the pledge of the PPA to the
9 finance parties. And then they would specifically acknowledge
10 the financings to the counterparties and agree that, in the
11 event of a default on the underlying documents, they would
12 continue to purchase the power pursuant to the terms of the
13 power purchase agreement.

14 THE COURT: And that's not an uncommon situation in
15 lots of contractual relationships. Like --

16 MR. MCDONALD: Sure.

17 THE COURT: -- quiet enjoyment agreement in a real
18 property lease. Right? The tenant --

19 MR. MCDONALD: Very much the same.

20 THE COURT: -- are agreeing that if the borrower of
21 the loan defaults -- but again, do you prove it by the
22 document, or do you prove it by some officer of the company
23 being deposed to say, by the way, did you know about this?
24 If it's --

25 MR. MCDONALD: Well --

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1 THE COURT: -- the latter, then obviously you have a
2 fact question. If it's the former, then the document tells us
3 itself.

4 MR. MCDONALD: Yes, I said, Your Honor, there are
5 contractual issues, but then PG&E went before the public
6 utilities commission to have all of these agreements approved:
7 the power purchase agreement, the structure of the transaction.
8 The PUC, their regulator, was aware of the existence of the
9 financings. The financings were integral to the ability to
10 have these projects approved in the first instance by the PUC.

11 So there's a lot more to this, and I'm starting to get
12 pretty much far afield from your question, but suffice to say
13 there are contractual issues and extra-contractual, factual
14 issues that would need to be developed for us to properly
15 present the case, which is why I started from the beginning --

16 THE COURT: Okay.

17 MR. MCDONALD: -- by saying that in the event that
18 we'd want to look at a strict question of law, we would have to
19 have some factual assumptions for the purpose of making that
20 determination alone by Your Honor.

21 THE COURT: In my --

22 MR. MCDONALD: Otherwise we have fact and law.

23 THE COURT: -- in my hypothetical, again -- I have a
24 bad habit of thinking starting with a simple hypothetical and
25 then trying to apply it. So in my hypothetical, the tenant

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1 moves into the office building and says to the landlord, I want
2 to stay here even if you get evicted because you get foreclosed
3 on by the lender. So the landlord says fine. Meet the lender.
4 You guys have a quiet enjoyment and whatever the other flipside
5 of --

6 MR. MCDONALD: SDNA, yes, subordination, non-
7 disturbance agreement.

8 THE COURT: Yes, right. And so there you look at the
9 document, and it's clear on the face of the document that the
10 landlord -- that the lender knew that there was a tenant who
11 wanted certainty, and there was a tenant who needed -- wanted
12 to avoid getting bounced out by the default of the landlord.

13 Again, we're back to my example. If the way -- if the
14 way you prove it is by the guy who did the deal, deposed three
15 years later and says oh, yeah, I knew about that, that's one
16 thing. If, on the other hand, there was a regulatory body that
17 was involved, and there was a PUC decision or maybe it's the
18 San Francisco Rent Board that says yes, we'll approve this,
19 then that's different.

20 Look, I don't want to turn this into what it doesn't
21 have to be. I'll do it your way, unless you both can figure
22 out a way to broaden it. Here's what I'm concerned about. I'm
23 concerned about that if you tee up just a pure ipso facto
24 clause, I won't say it's an advisory opinion, but I know from
25 my own experience from my days on the Bankruptcy Appellate

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1 Panel that appellate courts like to have a context. And if you
2 don't have -- if it's such a pure legal question, it's like why
3 are we even deciding this in the first place.

4 MR. TSEKERIDES: If I might, Your Honor. I mean, one
5 thing --

6 THE COURT: Yeah.

7 MR. TSEKERIDES: -- we could do, and this is sort of
8 on the spot, so forgive me for that, Mr. McDonald.

9 But one thing we could do is -- the way I'm -- as
10 you're talking, the way I'm thinking about this -- and I know
11 you're a fan of the hypotheticals. The way I've been thinking
12 about it in the meantime then is, well, it's not really unlike
13 if we were to move for summary judgment and, say, pure legal
14 issue on this, and we think you don't need any discovery on
15 these other ones, we should win anyway because we don't think
16 they're direct. The person opposing that has an obligation to
17 come forward and then identify, not only in responding to the
18 legal point but identify well, no, no, Judge, you can't -- you
19 can't grant summary judgment because we haven't had any
20 discovery. That's why I mentioned the 56(f) before.

21 THE COURT: Yeah, that's a good example.

22 MR. TSEKERIDES: And identify -- and identify what
23 those things would be. And so we could file a brief that laid
24 that out, and we've had separate proceedings with ConEd that
25 I'm not going to disclose on publicly. So obviously, I know

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1 some of their points that you would then not know right now.

2 Then they could respond and then explain -- which they
3 already have to us -- and explain why they think you shouldn't
4 rule, and then you decide. And I think, as we're talking out
5 loud, it may make sense to do something like that because if
6 you were to rule against us on the ipso facto, I would imagine
7 that, when they ask for all this discovery, we're going to say
8 no, you don't need all that discovery, and you certainly don't
9 need an expert to tell us what they think the markets look like
10 or what the industry looks like. You have to show what we
11 knew.

12 So it may help to short circuit that, or at least
13 frame the issue so when you're reading the briefing you can
14 come to a conclusion. So I do throw that out there as maybe
15 it's a hybrid of what we came in on, but maybe that makes more
16 sense.

17 THE COURT: Well, I'm glad you like my hypotheticals
18 because I like them. When I read your brief, Mr. Tsekerides,
19 again, as I mentioned, I saw that you flagged the ipso facto
20 clause, but you also flagged the other issues. And your
21 explanation about the California Supreme Court cases and
22 something -- again, I didn't do any heavy duty thinking of it
23 because, had you not requested this status conference, and had
24 we had on calendar the hearing on the 15th of June on the
25 merits, I would have been much more prepared. Maybe not this

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1 morning, but by the 15th, and I would have heard from the other
2 side.

3 But that's why you surprised me when you said, well,
4 this could be teed up solely on the ipso facto. And then you
5 surprised me further then saying and we could brief it some
6 more. And I'm going wait a minute; you don't need to brief it
7 anymore. You've already briefed it.

8 And so having said that I don't want to make the
9 mistake of having almost an abstract hypothetical for decision
10 purposes; I also don't want to put either side or both sides to
11 the expense of a very long effort to file a motion that's
12 doomed to fail because it does require a factual determination,
13 like, as you say, the summary judgment. I mean, I love -- I
14 love cross-summary judgment motions, but only if there are no
15 facts in dispute, material facts in dispute.

16 Well, I'm kind of at your disposition of what you
17 prefer. Do you want to -- do you two want to give it a little
18 more thought and think about whether you could agree on perhaps
19 the framework for some facts that are clearly not disputed?

20 Mr. McDonald, does that make sense, or do you want
21 to -- do you want to stick with the very narrow issue
22 regardless of -- and again, if you win it, you've got to go to
23 round 2. If you told me you know you're going to lose it, then
24 I'd say fine, let's brief it. But I don't know that you're
25 going to lose it. I have no idea.

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1 MR. MCDONALD: Let me think about it further, Your
2 Honor. I think if we went down the route that Mr. Tsekerides
3 was advocating, we'd have to put in declarations in support of
4 our pleadings. And we'd have to raise those issues, so I think
5 that that gets -- I think as Your Honor's said, that's a bit
6 far afield. It gets very expensive, and I think it would take
7 a lot more effort than simply briefing the insular legal issue.

8 THE COURT: Well, I assume -- there's no question, if
9 Mr. Tsekerides has a silver bullet whether it's ipso facto or
10 you filed it a day too late, he is entitled to make that
11 argument. And I (audio interference). And I'm not -- I'm not
12 a judge who says I like to have at least twenty issues to
13 decide if there's one issue that's case dispositive.

14 And so if he says I can win this on my ipso facto
15 clause argument, then I should let him do it, and I should tell
16 you there's your challenge and trust the two of you to know
17 that's the best thing to do. And I'm really not opposed to
18 doing it. This conversation has made me understand much more
19 thoroughly what I didn't understand.

20 Again, as I say, I fully thought what you'd be telling
21 me on your side, Mr. McDonald, was when you were going to file
22 your responsive brief and Mr. Tsekerides was going to tell me
23 when he'd file his reply, and I'd say okay, when we are going
24 to have the argument. But I'm up to -- I'm in your -- at your
25 disposal once again.

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1 MR. TSEKERIDES: I mean, I think -- if I may. I
2 apologize for interrupting. I think the cleanest thing -- I
3 mean, even though I -- you know how much I enjoy having the
4 dialogue with you, Your Honor, I think the cleanest thing might
5 be where we came in on. And again, I think you're a bit at a
6 disadvantage. We did, as I said, go through some sessions, so
7 I think if it's okay with you, if we stick to the way we were
8 thinking about it coming in --

9 THE COURT: Okay.

10 MR. TSEKERIDES: Because we don't know what's going to
11 happen coming out of that. And there -- but I do take Mr.
12 McDonald's point that if we did something like I was saying of
13 the 56(f), it's going to create a lot more work than both of us
14 were contemplating, because we thought this was an efficient
15 way to try to deal with a narrow issue. So if it's okay with
16 the Court, and I guess also with Mr. McDonald, if we stick to
17 what we were thinking about coming in, that might be the best
18 approach for everybody.

19 THE COURT: Okay. Mr. McDonald, pardon me for being
20 creative. I'll be (audio interference) creative and take your
21 proposal.

22 A couple of things. Mr. Tsekerides, you know from
23 prior PG&E matters there are some times when I get a lot of
24 paper. And I probably need to get all the backup papers in
25 hard copy unredacted.

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1 Mr. McDonald, if we're going to keep narrow on this
2 ipso facto, I take it all you need to do is file a responsive
3 legal argument. You don't have to put in more documents, do
4 you? Or do you?

5 MR. MCDONALD: I don't think so, Your Honor. I think
6 since it's a -- it's a question of law and of fact --

7 THE COURT: Yeah.

8 MR. MCDONALD: -- what (indiscernible) has already --

9 THE COURT: I mean, this --

10 MR. MCDONALD: -- submitted, it should be sufficient.

11 THE COURT: This is --

12 MR. TSEKERIDES: Yeah, well, hold on. Hold on one
13 second. No, we don't -- we actually discussed why what we
14 submitted is not sufficient, because we didn't fully brief the
15 ipso facto because we weren't briefing that as an issue.

16 MR. MCDONALD: No, no, Mr. Tsekerides, I was not -- I
17 was not implying --

18 MR. TSEKERIDES: Okay.

19 MR. MCDONALD: -- what --

20 MR. TSEKERIDES: All right.

21 MR. MCDONALD: No, I was saying by way of documents,
22 documents in evidence.

23 MR. TSEKERIDES: Oh, yeah, yeah, yeah.

24 MR. MCDONALD: What you have submitted in connection
25 with it be sufficient.

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1 MR. TSEKERIDES: Yeah, that's true.

2 MR. MCDONALD: I was not -- I was not saying that you
3 sufficiently briefed the issue.

4 MR. TSEKERIDES: Okay. Okay.

5 THE COURT: So --

6 MR. MCDONALD: Sorry, if I (indiscernible)
7 misunderstood.

8 MR. TSEKERIDES: Okay.

9 THE COURT: So let's assume -- let's move on. I take
10 both of your requests and word that you would both like to
11 proceed as you proposed at the outset, and anything I said is
12 off the table. The question then is -- Mr. Tsekerides, if
13 you -- you're essentially telling me you're going to re-brief
14 or more fully brief the ipso facto argument.

15 And to the extent that there are backup documents, I
16 just need to get hard copies of them. I can't -- I can't do a
17 300-page document on my little home laptop, so as you know --
18 Mr. McDonald may not know -- in many other instances during the
19 PG&E case, your firm or your local counsel have -- they know
20 where to send complete copies to me so I can get them at home.
21 And I'd want to continue to do that.

22 But on the other hand, Mr. McDonald, I don't need to
23 ask you to send me a hard copy of a twenty-five page brief that
24 I can read on the screen or print, which is -- which is what
25 I've done today.

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1 So let's not worry about that. If you two gentlemen
2 have agreed on a timing for the briefs, let's put them on
3 the -- let's get out there and do it.

4 And you mentioned earlier, Mr. Tsekerides, this might
5 be argued in August so --

6 MR. TSEKERIDES: Right. Subject to your -- yeah, so
7 we were --

8 THE COURT: My schedule's pretty open these days.

9 MR. TSEKERIDES: Okay. So we were going to have the
10 reorganized debtors -- we're calling it an objection, filed on
11 June 18; the response from ConEd on July 16th; the reply from
12 the reorganized debtors on July 30th. And then either the week
13 of August 2nd or August 9th for the hearing is what we were
14 contemplating, based on your schedule.

15 THE COURT: So basically when we come to that hearing,
16 it'll just be oral argument on the brief -- on what's been
17 briefed, unless I do one of my famous docket (audio
18 interference) disposed of it ahead of time. Right?

19 MR. TSEKERIDES: That is correct.

20 THE COURT: So what happens to this -- what happens to
21 this twenty-nine page magnum opus that I read yesterday, and
22 all the backups that I might have to look at? I just -- I
23 don't have to even (audio interference)?

24 MR. TSEKERIDES: Well, for now, you don't have to
25 think about it. Some of those materials -- and we'll go back

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1 over, because I think the documents that we're claiming have
2 the ipso facto clause in them we'll obviously have to put back
3 in front of you. You probably have it, but as you said, you
4 probably don't have it in hard copies, so we'll make those
5 arrangements.

6 THE COURT: Yeah, but do it (audio interference).
7 Again, I don't -- I tell you I prepare, but I don't prepare
8 weeks in advance, particularly in a lot of things. So I think
9 I'd rather wait until you file your brief on the 18th of June.
10 And then Mr. McDonald files his. And then I take a look at
11 those and anticipate if Mr. McDonald has second thoughts and
12 wants to include something.

13 Again, it's made a little more difficult because of
14 the redaction. And when things get redacted, we have to
15 respect your desire to redact them, but I still have to get
16 them. So I physically get them, and I get them in the
17 unredacted form, which is helpful. And so yesterday when I
18 read -- when I read the brief that you wrote, I could see what
19 was redacted and what wasn't, and that was very useful.

20 And obviously, it probably won't come to pass, but if
21 we ever -- we do have oral argument, I got to make sure we
22 don't blow the confidentiality by making reference to those.
23 It sounds like that isn't the case on a pure legal argument.
24 So --

25 MR. MCDONALD: Your Honor, if I could just address

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1 that briefly, Your Honor. The documents at issue are very
2 voluminous, and they contain sensitive commercial information
3 for both ConEd and PG&E.

4 THE COURT: Yeah, I'm aware of that.

5 MR. MCDONALD: Yeah. So what I think might be the
6 easiest way for us to proceed is when Mr. Tsekerides puts in
7 his brief, it's just to have the relevant excerpts of the PPAs
8 included as the exhibit, without the entire documents at issue,
9 that Your Honor may see at least the relevant provisions that
10 he is arguing with respect -- arguing about with respect to
11 ispo facto. Therefore, I don't have to put in anything to
12 supplement that. And you will have just a snapshot of what
13 we're -- the provisions that are at issue for that legal
14 argument.

15 THE COURT: Well, but I don't mind. Listen, I'm
16 not -- there are more exciting things to do in life than read
17 power purchase agreements, but I don't mind looking at the
18 document to see it in context. The funny thing for me
19 personally that neither of you were involved in PG&E 1, but in
20 PG&E 1, I got to be very familiar with a lot of PPAs early in
21 the case. But in PG&E 2, I think this is the first time we've
22 ever had even to think about it.

23 So I mean, you know, Mr. Tsekerides, when you and I
24 first met, I thought you were going to have all sorts of
25 executory contract motions for me like we had in PG&E 1, which

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1 was probably the heaviest duty burden in the first part of that
2 first case, but not in this case. So for both of you --
3 (indiscernible) --

4 MR. TSEKERIDES: Why don't we -- why don't we see how
5 that -- yeah. Let's see how that goes.

6 THE COURT: Yeah. Don't worry about copies of
7 anything. If I want -- let me rephrase. Mr. Tsekerides, you
8 have already put in the record -- partly redacted, partly not -
9 - much of your supporting -- some of your supporting documents.
10 You should preserve the redaction that you and ConEd think are
11 important. And don't worry about me.

12 And when I see your brief, and maybe again when Mr.
13 McDonald files his, maybe I'll want to see something more,
14 maybe not. Again, you're both experienced brief writers. But
15 sometimes when a brief includes one sentence, I've found it a
16 little more helpful to go read the next sentence or the next
17 sentence in the backup.

18 Ms. Parada, do we have PG&E calendars for our --
19 because I want to set this separately but on a PG&E day
20 perhaps, for the first two weeks of August?

21 THE CLERK: August 10th is a regular -- is a day
22 reserved for PG&E at 10 o'clock.

23 THE COURT: So that would be 10 o'clock. So if I put
24 these folks on, say, at 11 o'clock and set aside an hour, that
25 would work.

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1 Does that date work for both of you?

2 MR. TSEKERIDES: It does for me.

3 MR. MCDONALD: Yes, Your Honor.

4 MR. TSEKERIDES: Okay.

5 MR. MCDONALD: Works for me as well, your Honor.

6 THE COURT: I'm sorry? Mr. McDonald, yes?

7 MR. MCDONALD: Yes. Yes.

8 THE COURT: Okay. And Mr. Tsekerides?

9 MR. TSEKERIDES: It does. Thank you.

10 THE COURT: Okay, so Ms. Parada, we're going to take
11 off calendar the ConEd claim -- cure claim motion for June 15.
12 We will --

13 Mr. Tsekerides, why don't you -- why don't you just
14 file a stipulation with Mr. McDonald that just recites these
15 dates? We can put them in the minutes, but I'd rather have it
16 on a document that the debtors and ConEd simply agree to the
17 following briefing schedule for the hearing on the portion of
18 the objection to the cure amount. Just a one-liner.

19 MR. TSEKERIDES: Yeah, will do.

20 THE COURT: So the public document reflects it because
21 sometimes with the omnibus objections that are coming up on the
22 PG&E documents, they're up there, they're in the multiples,
23 tens and twenties and thirties. And this is a much more
24 discrete -- obviously at the moment, a twelve-million-dollar
25 question. So --

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1 MR. TSEKERIDES: Right. Okay, will do. We'll take
2 care of that.

3 THE COURT: Okay. We done?

4 MR. TSEKERIDES: Yeah.

5 MR. MCDONALD: And just one more thing. Mr.
6 Tsekerides, I know we've engaged in informal discovery,
7 provided a lot of documents to you. If you feel you need any
8 further copies of any of the PPAs or any of the other
9 documents, please let us know. And we'll try to get them to
10 you as soon as possible.

11 MR. TSEKERIDES: Okay. Yeah, appreciate it. Thank
12 you.

13 I think that's it, Your Honor.

14 MR. MCDONALD: Your Honor -- Your Honor, it was great
15 to see you again. Thank you for your time.

16 THE COURT: Okay. Thank you. Good to see you all.
17 Thank you all. I will conclude the hearing.

18 Thank you, Ms. Parada and Ms. Thomas, and both counsel
19 sign off. Have a nice day -- good weekend.

20 MR. TSEKERIDES: Thank you. All right.

21 MR. MCDONALD: You too.

22 (Whereupon these proceedings were concluded at 10:43 AM)

23

24

25

1 C E R T I F I C A T I O N
23 I, Tamara Bentzur, certify that the foregoing transcript is a
4 true and accurate record of the proceedings.5 *Tamara Bentzur*
6
78 _____
9 /s/ TAMARA BENTZUR, CET-82410
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